PUBLIC WORKS AGREEMENT

THIS AGREEMENT, is entered into between the City of Bremerton, a Washington Municipal Corporation ("City"), and BRC Incorporated ("Contractor"), whose mailing address is PO Box 2330, Buckley, Washington 98321.

The parties agree as follows:

1. CONTRACTOR SERVICES. The Contractor shall perform the following services for the City:

Removal and disposal of equipment, material, and other items from property identified for cleanup as directed by the Code Enforcement Officer and as indicated in the Scope of Work attached as Exhibit A.

- 2. COMPENSATION. The City shall pay the Contractor the sum of \$26,500 (Contract Price), plus any applicable Washington State Sales Tax, for the work and services contemplated in this agreement and according to the rates indicated in the Scope of Work attached as Exhibit A. The Contractor shall invoice the City monthly. The City will pay for the portion of the work described in the invoice that has been completed by the Contractor and approved by the City. The City payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project. The Contract Price may be adjusted pursuant to Section 6. Any adjustments in Contract Price shall proportional to the change in the Scope of Work.
 - A. <u>Performance Bond</u>. Pursuant to Chapter 39.08 RCW, the Contractor, shall provide the City a performance bond for the full contract amount to be in effect until sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.
 - B. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor & Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.
 - C. <u>Defective or Unauthorized Work</u>. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this agreement; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and

- Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor.
- D. <u>Final Payment: Waiver of Claims</u>. THE MAKING OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.
- 3. INDEPENDENT CONTRACTOR. Contractor is and shall be at all times acting as an independent contractor and not as an employee of the City. The Contractor shall secure at its expense, and shall be responsible for all payments of income tax, social security, state disability insurance compensation, unemployment compensation, and all other payroll deductions for the Contractor, officer, agents, employees and sub-contractors. The Contractor shall also secure all applicable business licenses, if required, in connection with the contract services, including all required licenses for Contractor's officers, agents, employees and sub-contractors.
- 4. TERMINATION. Either party may terminate this agreement for any reason with or without cause on ten (10) days prior written notice to the other party.
- 5. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work. Contractor shall pay prevailing wages and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries is attached.
- 6. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this agreement. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to an authorized agent of the City within fourteen (14) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time allowed, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract

work. If the Contractor disagrees with the equitable adjustment the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below:

- A. <u>Procedure and Protest by the Contractor</u>. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor shall:
 - 1. Immediately give a signed written notice of protest to the City;
 - 2. Supplement the written protest within fourteen (14) calendar days with a written statement that provides the following information:
 - a. The date of the Contract's protest.
 - b. The nature and circumstances that caused the protest.
 - c. The provisions in this agreement that support the protest.
 - d. The estimated dollar cost, if any, of the protested work and how that estimate was determined.
 - e. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The City shall have access to any of the Contractor's records needed for evaluating the protest.

- 3. The City will evaluate all protests, provided the procedures in this section are followed. If the City determines that a protest is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.
- B. <u>Contractor's Duty to Complete Protested Work</u>. In spite of any protest, the Contractor shall proceed promptly with the work as the City has ordered.
- C. <u>Contractor's Acceptance of Changes</u>. The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

- D. <u>Failure to Protest Constitutes Waiver</u>. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. <u>Failure to Follow Procedures Constitutes Waiver</u>. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts form the City any written or oral order (including directions, instructions, interpretations, and determination).
- 7. CLAIMS. The Contractor shall give written notice to the City of all claims other than change orders within fourteen (14) calendar days of the occurrence of the events giving rise to the claims. Any claim for damages, additional payment for any reason, or extension of time, whether under this agreement or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this agreement; or, if (and only if) no such provision is applicable, unless that claim is set forth in detail in writing and received by the City within seven (7) calendar days from the date Contractor knew, or should have known, of the facts giving rise to the claim. At a minimum, a Contractor's written claim must include the information set forth regarding protests in Section 6.A.2.a.-e.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

Contractor must, in any event, file any claim or bring any suit arising from or connected with this agreement within 120 calendar days from the date the contract work is complete.

- 8. WARRANTY. The Contractor shall correct all defects in workmanship and materials within one year from the date of the City's acceptance of the Contract work. When defects are corrected, the warranty for that portion of the work shall extend for one year form the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.
- 9. INDEMNIFICATION. Contractor shall defend, indemnify and hold the City, its officer, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including all legal costs and attorney fees, arising out of or in connection with the performance of this agreement, except for injuries and damages caused by the City's negligence.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THIS INDEMNIFICATION CONSTITUTES THE CONTRACTOR'S WAIVER OF IMMUNITY UNDER <u>INDUSTRIAL INSURANCE</u>, TITLE 51 RCW, SOLELY FOR THE PURPOSE OF THIS INDEMNIFICATION. THE PARTIES ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this agreement.

10. INSURANCE. The Contractor shall procure and maintain for the duration of this agreement insurance of the types and in the amounts described below against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by the Contractor, its agents, representative, employees, subconsultants or subcontractors.

Before beginning work on the project described in this agreement, the Contractor shall provide a <u>Certificate of Insurance</u> evidencing:

- 1. <u>Automobile Liability</u> insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- 2. <u>Commercial General Liability</u> insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and general aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU); and employer's liability.
- 3. Excess Liability insurance with limits not less than \$1,000,000 per occurrence and aggregate.

Any payment of deductible or self insured retention shall be the sole responsibility of the Contractor.

The City, its officials, employees, agents and volunteers shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the Contractor and a copy of the endorsement naming the City as additional insured shall be attached to the <u>Certificate of Insurance</u>.

The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

The Contractor's insurance shall be primary insurance as respects the City, and the City shall be given thirty (30) calendar days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

11. MISCELLANEOUS.

- A. <u>Nondiscrimination</u>. In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Contractor, its sub-contractors, or any person acting on behalf of such Contractor or sub-contractor shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
- B. <u>Compliance with Laws</u>. Contractor shall comply with all federal, state and local laws, rules and regulations throughout every aspect in the performance of this agreement.
- C. <u>Work Performed at Contractor's Risk</u>. Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of this agreement. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- D. <u>Nonwaiver of Breach</u>. The failure of the City to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be constructed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect
- E. Governing Law. This agreement shall be governed and construed in accordance with the laws of the State of Washington. If any dispute arises between the City and Contractor under any of the provisions of this agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the Kitsap County Superior Court, Kitsap County, Washington.
- F. Attorney's Fees. To the extent not inconsistent with RCW 39.04.240, in any claim or lawsuit for damages arising from the parties' performance of this agreement, each party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit the City's right to indemnification under Section 9 of this agreement.

- G. <u>Written Notice</u>. All communications regarding this agreement shall be sent to the parties at the addresses listed on the signature page of this agreement, unless otherwise notified. Any written notice shall become effective upon delivery, but in any event three (3) calendar days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated on this agreement.
- H. <u>Assignment</u>. Any assignment of this agreement by the Contractor without the written consent of the City shall be void.
- I. <u>Modification</u>. No waiver, alteration, or modification of any of the provisions of this agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.
- J. <u>Severability</u>. If any one or more sections, sub-sections, or sentences of this agreement are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this agreement and the remainder shall remain in full force and effect.
- K. <u>Entire Agreement</u>. The written provisions and terms of this agreement, together with any attached Exhibits, supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this agreement. This agreement and any attached Exhibits contain the entire agreement between the parties. Should any language in any Exhibit to this agreement conflict with any language contained in this agreement, the terms of this agreement shall prevail.

IN WITNESS WHEREOF, the parties below have executed this agreement.

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Print Name RL Stavley Title: <u>Desident</u>

DATE 4-11-03

Notices to be sent to:

CONTRACTOR:

BRC Incorporated PO Box 2330 Buckley, WA 98321 THE CITY OF BREMERTON

Print Name: Cary Bozeman

Title: Mayor

DATE 4-23-03

Notices to be sent to:

CITY OF BREMERTON:

Janet Lunceford, Code Enforcement Officer 286 Fourth Street Bremerton, WA 98337

APPROVED AS TO FORM:

ROGER A. LUBOVICH Bremerton City Attorney

ATTEST:

Bremerton City Clerk

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Exhibit A Scope of Work

1. Intent of the Contract.

The work included in this Contract consists of the handling, compaction, consolidation, loading, transport, disposal, recycling or recovery of all designated items located at 1701 Pennsylvania Avenue in Bremerton, Washington. A general listing of the items is listed below.

The Contract includes, but is not limited to providing all materials, labor, equipment, supplies, and licenses necessary for the removal, salvage, destruction, disposal, recycling and/or recovery of all items identified below as well as traffic control, containment of hazardous materials, site security, and the over the road transport of materials for final disposition off the site. The Contract does not include the removal or handling of hazardous waste not associated with the removal of identified items.

The salvage value provided in the Contractor's bid shall be credited to the Contract to off-set the cost of abatement actions.

The work to be completed is as follows:

- As required, obtain permits to accomplish all work.
- Mobilize all equipment, materials, and manpower necessary to complete work.
- Prepare work areas at the site for handling and loading materials for off-site transport and the on-site containment of hazardous materials.
- Remove hazardous materials from vehicles, vessels, equipment, and materials (as required) for the off-sit transport and final disposition.
- Use on-site crushing and baling, and/or off-site hauling to remove ALL vehicles, vessels, equipment, and materials for final disposition. This work may involve disposal, salvage, recycling, or recovery methods.
- Demobilize all equipment and materials used in the performance of the project, and restore any damage to the properties that occurs during the project.
- Deduct salvage value from the total cost of completing all work
- Comply with the terms of the Kitsap County Superior Court Order entered in Kitsap County Superior Court Cause No. 97-2-01749-3, which authorizes the City of Bremerton's contractor to go onto the property and bring conditions on the property into compliance with the Court's May 8, 1998 injunction.

This work is being performed under the Kitsap County Superior Court Order attached hereto, which authorizes the City of Bremerton and their agents (i.e., Contractor) to abate the nuisance generated from the accumulation of vehicles, vessels, materials, and equipment. Removal of the vehicles and vessels will require compliance with Hulk Hauling and marine licensing requirements (WAC 308-65 and WAC 308-93). The city will provide additional license information and registration, as necessary, for the removal and final disposition of vehicles, vessels, and materials at the property.

2. Increased or Decreased Quantities.

The Contractor shall document any changes to the quantities of designated items to be removed from the site. Increases or decreases in quantities that affect the lump sum price, including either base amount or salvage credit, shall be reported to the City of Bremerton in writing. The lump

Scope of Work Page 1 of 3

sum amount shall be adjusted to reflect changes in quantities based upon the equivalent of truck loads or other basis as agreed upon by the parties.

SESKO PROPERTY INVENTORY PENNSYLVANIA AVE CONDUCTED MARCH 5, 2003 BY JANET LUNCEFORD KEN BROWN

TRUCKS, TRAILERS, CARS, HEAVY EQUIPMENT

Truck, GMC, 18,000 GVW, License HZ 2875, Length = 31'

Truck, International, License LP 5556, with building on truck bed (see bldg description below)

Truck, REO w/o bed, single axle w/ dual tires

Truck, GMC, ID No. T17DEAV607507, 30,000 GVW, single axle, blue

Car, Ford Mustang, White, License 806 KUI

Trailer, 20', dual axle, no license, white, ID Tag near door 54315S658

Crane, International truck, 22', dual axle, Boom missing, A Frame hoist on front.

Forklift, Athey Prod Corp, 1975, Model ARTFT-6 Ser G1614, 6000# cap, partially dismantled Service stair, hydraulic, 4 tire, 22' long x 4' wide x 10' high

Boat Gangway, 3.5' wide x 45" tall side rails x 39' long. Alum grating, wood side flooring

BOATS

Boat, 22 ½ foot, wood hull, single axle trailer, WN5936D(loose board), engine, hull cutout Boat, 16' fiberglass with loose canopy rail supports, WN 9811 E

OTHER EQUIPMENT AND MATERIALS

Green metal building 12.5' x 7' x 6'-10" tall, perhaps originally truck mounted

Wooden house, 22' x 16.5' x 7'-8" high w' 3' roof overhang, on truck (see above)

Scrap wood, boat cushion, wire, misc in above wooden building

Truck tires, 4 ea 11.00 - 20, mounted

Truck tire, 1 ea 9R 22.5, mounted

Car tire, 1 ea, mounted

4" dia steel pipe, 2 ea @ 12.5 feet (setting on hydraulic stair)

Misc grating

Catch Basin, Type 1, 1 ea

Misc steel pipe, 2", 100 feet and 3", 20 feet

Wood beams 10" x 24" x 40' long, 2 ea

Wire rope, 3/8", 40 feet

Barb wire fence holder supports, 3 ea

Concrete floats, foam filled, 8.5' x 3' x 3.5' high, 4 ea

Concrete floats, foam filled, 10' x 5' x 4' high, 3ea

Fence section, chain link, 6.5' x 8' high

Gate, chain link, 4' x 6.5'

BBQ, standard charcoal

Heavy metal troughs or molds or counter weights, 16" x 48" x 15" x 2.5" thick

Ecology block, 6' x 2' x 2', 1 ea

Manhole cover, 1 ea

Scope of Work

Page 2 of 3

Pile of 1-1/4 wood concrete forms Pile of lumber, 4x4, 4x6, 8x8, with 3 pallets Boat hatch cover, 3.5' x 4.5' x 1.5' Cyclone fence slats, plastic, 25 ea PVC tubing, 1/2", 20' Garden hose Car battery Sludge in 5 gallon container, 2 gallons Safes, 22" x 22" x 36", 2ea Exhaust pipe with muffler 3" dia rope, rotten, 20 feet Plastic tubing, 5-1/2", 15' long, 3 ea 2" x 2" angle iron Plastic tube, 4-1/2", 15' long, 1 ea Wood plank, 4' x 8' x 10' Bracket, 2 1/2" dia, metal, 10' long, curved with hook on one end Steel fence posts, 2 ea Concrete slab, 3' x 6' x 3", 1 ea Concrete slab, 1' x 6' x 3", 1 ea Styrofoam floats under fiberglass 16' boat (see above), 4 ea Plastic flower pots, 30 ea

Scope of Work Page 3 of 3